In the Supreme Court
OF THE
United States

Supreme Court, U. S.
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OCTOBER TERM, 1940

No. 866

MCLAUGHLIN LAND AND LIVESTOCK COMPANY (a corporation),
Petitioner,

vs.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,
Respondent.

On Petition for Writ of Certiorari to the District Court of Appeal of the State of California, First Appellate District.

BRIEF IN OPPOSITION FOR THE RESPONDENT BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION.

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OPINION BELOW.

The opinion of the District Court of Appeal of the State of California, in and for the First Appellate District (R. 262-276), is reported in 40 Cal. App. (2d) 620, 105 P. (2d) 607.

JURISDICTIONS.

The decision of the District Court of Appeal of the State of California was rendered on September 16, 1940. A petition for a hearing by the Supreme Court of the State of California was denied on November 7, 1940.

The jurisdiction of this court was sought under section 237 of the Judicial Code (28 USCA 344).

The statute of the United States involved herein is section 75 of the Bankruptcy Act, as amended, 47 Stat. 1407, 11 USCA, sec. 203.

QUESTION PRESENTED.

The question presented by the petition for writ of certiorari is whether or not a writ should issue to a state court that has decided a case upon several distinct and separate legal grounds, any one of which standing alone would be sufficient support for the decision by the state court, merely because one of those distinct and separate grounds involved an interpretation of a federal statute, which petitioner claims was interpreted erroneously by the state court.

STATEMENT OF THE CASE.

On March 17, 1931, petitioner and others made, executed and delivered a promissory note in the principal sum of $173,800.00 to respondent and as security for said note conveyed, by way of a deed of trust, 6640

acres of land, including the 600 acres involved in this action, to Corporation of America, as trustee for respondent. (R. 145-155.) Petitioner defaulted under that note, and the property was foreclosed and purchased by respondent at foreclosure sale on March 28, 1932. Thereafter a trustee's deed was executed, delivered and recorded. (R. 155-159.)

Immediately following the sale, petitioner surrendered possession of all the property other than the 600-acre "Home Place" which is involved in this action.

Respondent filed an action in unlawful detainer against petitioner and its individual stockholders and officers, in which action the petitioner and its stockholders and officers admitted the regularity of the foreclosure proceedings and the foreclosure sale (Complaint, par. IV, R. 197; Answer, par. IV, R. 203), but claimed that the respondent had executed to them an oral seven-year lease. That action was determined in favor of the stockholders and officers of the petitioner. The petitioner, at the trial of that action, disclaimed any interest in the oral seven-year lease.

While the action in unlawful detainer was pending, an assignee for collection of respondent filed an action for a deficiency judgment against petitioner. Judgment in that action was entered as prayed and has become final. (R. 138-144, 159-166.) In fact, the deficiency judgment has been renewed, and the latter judgment, which renewed the deficiency judgment, has likewise become final. (*Kirkpatrick v. McLaughlin,* 103 Cal. App. Dec. 505, 107 P. (2d) 199.)

After the litigation of the first unlawful detainer action was completed, respondent commenced a second action in unlawful detainer against petitioner and its stockholders and officers, on the theory that their tenancy on the 600-acre "Home Place" had terminated. This action was also determined in favor of the stockholders and officers of petitioner on the ground that the judgment in the first unlawful detainer action was *res judicata.* (*Bank of America v. McLaughlin Land and Livestock Company,* 22 Cal. App. (2d) 411, 71 P. (2d) 291.) In this second unlawful detainer action, petitioner, by its answer, pleaded that it was not a party to the oral seven-year lease.

During the pendency of the second unlawful detainer action, petitioner filed its petition under section 75 of the Bankruptcy Act and in its second amended schedules scheduled the entire 6640 acres of land covered by the deed of trust heretofore mentioned. It was not until its second amended schedules were filed in the bankruptcy proceedings that the petitioner ever made claim to 5800 acres of the property originally covered by its deed of trust to the respondent. (R. 166-183.) Respondent filed a petition to dismiss the bankruptcy proceedings, in which it alleged that petitioner was not a farmer within the meaning of the Bankruptcy Act; that the respondent became the owner of the property described in petitioner's second amended schedules by purchasing the property at trustee's sale held on March 26, 1932; and that the petitioner was not the owner of or lawfully possessed of any farming property and could not therefore be a farmer. The

hearing on respondent's petition to dismiss was referred to a special master for hearing and report; a hearing was held; the special master filed an extensive report and findings recommending the dismissal of the bankruptcy proceedings on the ground among others that petitioner did not own and was not lawfully possessed of any farming property; the District Court approved the findings and report of the special master and dismissed the bankruptcy proceedings (R. 67-138); and thereafter the judgment of the District Court of Appeal was affirmed by the Circuit Court of Appeals, in and for the Ninth Circuit. (*McLaughlin Land and Livestock Company v. Bank of America,* 94 Fed. (2d) 491.)

Respondent then waited until the expiration of the oral seven-year lease and then commenced a new action in unlawful detainer against the stockholders and officers of the appellant on the ground that they were wrongfully holding over after the expiration of their lease. In their answer they denied that they were in possession of the property and affirmatively alleged that they had delivered possession of the 600-acre "Home Place" on December 1, 1938, which was the day following the expiration of the oral seven-year lease, to petitioner. (R. 16.)

Immediately after the receipt of this answer, respondent commenced the instant action against petitioner for the possession of the "Home Place". At the trial of this action it was the contention of the respondent that the recitals in the trustee's deed as to the regularity of the foreclosure proceedings and the

fact that the sale was actually held were conclusive upon petitioner; that the deficiency judgment rendered in favor of the respondent's assignee for collection conclusively estopped petitioner from re-litigating the regularity of the foreclosure proceedings and the question of whether or not a foreclosure sale had actually taken place; and that the judgment of dismissal of the bankruptcy proceeding filed by the petitioner likewise conclusively estopped petitioner from re-litigating these issues. The trial court so determined, and the determination by the trial court was affirmed by the District Court of Appeal of the State of California.

The only contention which the petitioner has made is that the foreclosure sale was not valid. The District Court of Appeal of the State of California has determined that the petitioner is not in a position to raise this point for three separate and distinct reasons:

(1) That the recitals in the trustee's deed are conclusive against petitioner;

(2) That the judgment in the action for a deficiency judgment constituted a conclusive estoppel against the re-litigation of this question; and

(3) The judgment dismissing the bankruptcy proceedings instituted by petitioner under section 75 of the Bankruptcy Act constituted a conclusive estoppel against the re-litigation of this question.

In other words, the District Court of Appeal of the State of California decided that by virtue of each of the three foregoing separate and distinct reasons, the matter which petitioner sought to litigate in this action

could not be inquired into anew. The mere fact that one of these grounds may have involved or did involve a federal question does not militate against the conclusiveness of the opinion by the District Court of Appeal of the State of California on the two remaining grounds of its decision, which concededly did not involve a federal question.

ARGUMENT.

I.

THERE IS NO REASON FOR GRANTING A WRIT OF CERTIORARI.

The respondent submits that there is no reason for granting a writ of certiorari in this action. The decision by the District Court of Appeal of the State of California was based upon three separate and distinct grounds, any one of which standing alone was sufficient for the affirmance of the judgment appealed from. One of the grounds relied upon involved the interpretation of section 75 of the Bankruptcy Act. The other two separate and distinct grounds concededly did not involve a federal question. Consequently, the question of whether or not the state court was correct in its interpretation of section 75 of the Bankruptcy Act is of no consequence, and the petition for certiorari should be dismissed.

McCoy v. Shaw, 277 U. S. 302, 48 S. Ct. 519, 72 L. Ed. 891;

Abi v. Bank of Weaver, 282 U. S. 765, 51 S. Ct. 252, 75 L. Ed. 790;

Fox Film Corporation v. Muller, 296 U. S. 207, 210, 56 S. Ct. 183, 184, 80 L. Ed. 158;
United States v. Hastings, 296 U. S. 188, 193, 56 S. Ct. 218, 220, 80 L. Ed. 148.

The question presented to the state court was whether or not the petitioner could inquire into the regularity of the foreclosure proceedings and whether or not a foreclosure was actually conducted. The state court refused to admit any evidence in this respect for four separate and distinct reasons. First, on the ground that the judgment in the deficiency action was *res judicata* and conclusively determined that the foreclosure proceedings were regular and that a foreclosure sale was actually conducted. This ground of the state court's judgment was non-federal and was adequate to support its judgment. Secondly, the state court held that the recitals in the trustee's deed that the foreclosure sale had been held and that the proceedings prior to the foreclosure sale were regular in all respects were conclusive upon petitioner and that the petitioner could not inquire into the truthfulness of those recitals. This ground of the state court's decision was likewise non-federal and was adequate to support the judgment of the District Court of Appeal of the State of California. Thirdly, the state court held that the regularity of the state court proceedings was inquired into and litigated in the bankruptcy proceedings instituted by petitioner under section 75 of the Bankruptcy Act, and the determination by the Bankruptcy Court was conclusive upon petitioner. This part of the state court opinion did involve a fed-

eral question, but it is respectfully submitted that the opinion of the state court in this respect was proper. Fourth, the state court held that the regularity of the foreclosure proceedings was not involved in or determined by the first two unlawful detainer actions instituted by respondent against petitioner. See *Bank of America N. T. & S. A. v. McLaughlin,* 37 Cal. App. (2d) 415, 418, 99 P. (2d) 548, wherein the court so interpreted these judgments. This determination by the state court did not involve a federal question.

It is obvious, therefore, that the question of whether or not the state court was correct in its interpretation of section 75 of the Bankruptcy Act is beside the point, inasmuch as its judgment is supported by several other distinct grounds which were non-federal.

II.

THE DECISION OF THE STATE COURT ON THE FEDERAL QUESTION WAS CORRECT.

The state court stated that a petition filed under section 75 of the Bankruptcy Act presented two jurisdictional questions. First, whether the petitioner is a farmer within the meaning of the Bankruptcy Act, and, secondly, is the petitioner the owner of or legally possessed of any farming property. Both questions were presented by the respondent's petition to dismiss the proceedings instituted by petitioner under section 75 of the Bankruptcy Act, and the Bankruptcy Court determined that it lacked jurisdiction in the bankruptcy proceedings on both grounds. The state court

held that the determination that the petitioner was not lawfully possessed of and did not own farming property was *res judicata* notwithstanding the fact that the Bankruptcy Court also determined that the petitioner was not a farmer because it was not engaged in farming and because its charter had been forfeited because of its failure to pay its state corporate franchise tax.

The state court's decision is supported by *Wright v. Union Central Life Insurance Co.*, 304 U. S. 502, 508-509, 58 S. Ct. 1025, 1029-1030, wherein this court stated:

> "With the delivery of the deed, prior to any effective extension of the period of redemption, the purchaser's rights, flowing from the judicial sale, were no longer affected by the *court's jurisdiction of petitioner and petitioner's estate* under the Bankruptcy Act. Nothing in section 75 as it now stands indicates any intention that the bankruptcy courts assume control over land not previously within the jurisdiction of a bankruptcy court, and already completely divorced from any title of the debtor."

To the same effect:

Bernards v. Johnson (CCA 9), 103 F. (2d) 567, affirmed without opinion by a divided court on April 7, 1941;

Bastian v. Erickson (CCA 10), 114 F. (2d) 338, 340-341;

In re Weis, 10 F. S. 227, 229;

In re Knauff, 10 F. S. 786;

In re Randall, 20 F. S. 470;

In re Crisman, 35 F. S. 282.

CONCLUSION.

Because of the fact that the judgment by the state court was predicated upon several distinct and separate grounds, any one of which was sufficient to support its judgment, and only one of which involved a federal question, it is respectfully submitted that the petition for certiorari should be dismissed. In any event, in view of the further fact that the state court's determination of the federal question was clearly correct, it is respectfully submitted that the petition for certiorari should be denied.

Dated, San Francisco, California,
April 18, 1941.

Respectfully submitted,
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